

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

BILLY DRIVER, Jr.,

Plaintiff,

v.

CHCF, et al.,

Defendants.

No. 2:21-CV-0745-TLN-DMC-P

**ORDER**

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a "... short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege  
2 with at least some degree of particularity overt acts by specific defendants which support the  
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
4 impossible for the Court to conduct the screening required by law when the allegations are vague  
5 and conclusory.

## 6 7 **I. PLAINTIFF'S ALLEGATIONS**

8 In the caption Plaintiff provides "CHCF/DSH Mail room manager(s) and mail log  
9 #unit B3A 4/12th/2021 Officer c/o McClough and Miss Vang ETAL." ECF No. 1, pg. 1.  
10 Plaintiff does not mention Defendant McClough or Vang anywhere else in the complaint.  
11 Plaintiff appears to allege that McClough and/or Vang interfered with Plaintiff's legal mail in  
12 some way. See generally id. at 2-3.

## 13 14 **II. DISCUSSION**

15 Plaintiff's complaint is, at best, an access to courts claim. However, Plaintiff's  
16 complaint suffers from two defects. First, Plaintiff has not alleged an injury relating to his access  
17 to courts claim. Second, Plaintiff has not sufficiently connected a named defendant with the  
18 alleged deprivation.

### 19 **A. Causal Link**

20 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual  
21 connection or link between the actions of the named defendants and the alleged deprivations. See  
22 Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A  
23 person 'subjects' another to the deprivation of a constitutional right, within the meaning of  
24 § 1983, if he does an affirmative act, participates in another's affirmative acts, or omits to perform  
25 an act which he is legally required to do that causes the deprivation of which complaint is made."  
26 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations  
27 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
28 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth

specific facts as to each individual defendant's causal role in the alleged constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

Here, Plaintiff fails to allege what actions were allegedly taken by either of the defendants. As to each named defendant, Plaintiff must allege which Defendant, acting under color of state law, took what action that caused which specific constitutional violation. Plaintiff will be provided an opportunity to amend to cure this defect.

### **B. Access to Courts**

Prisoners have a First Amendment right of access to the courts. See Lewis v. Casey, 518 U.S. 343, 346 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977); Jones v. Williams, 791 F.3d 1023, 1035 (9th Cir. 2015); Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995). Prison officials must "assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Bounds, 430 U.S. at 828; Silva v. Di Vittorio, 658 F.3d 1090, 1103 (9th Cir. 2011) (overruled on other grounds as stated by Richey v. Dahne, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015)). But the right does not require a particular methodology. See Lewis, 518 U.S. at 356. It guarantees the "capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." Id. It does not promise to turn inmates into effective litigators. See id. at 354-55; Phillips v. Hust, 588 F.3d 652, 655 (9th Cir. 2009). The right of access secures the ability to present non-frivolous claims to the court, it does not secure a right to discover claims or litigate them effectively once filed. See Lewis, 518 U.S. at 354-55; Phillips, 477 F.3d at 655. The tools required are those that inmates need to attack their sentences or challenge conditions of confinement. See Lewis, 518 U.S. at 355; Phillips, 477 F.3d at 655. "Impairment of any other litigating capacity is simply one of the incidental (and perfectly constitutional) consequences of conviction and incarceration." Lewis, 518 U.S. at 355; see Phillips, 477 F.3d at 655. The right is restricted to non-frivolous criminal appeals, civil rights actions under 42 U.S.C. § 1983, and habeas corpus petitions. Lewis, 518 U.S. at 353 n.3, 354-56.

The United States Supreme Court has identified two categories of access-to-court claims. Christopher v. Harbury, 536 U.S. 403, 412-13 (2002). The first category includes

1 “forward-looking” claims, which allege that official action presently frustrates a plaintiff’s ability  
 2 to prepare and file a suit. Id. at 413. The second category, “backward-looking” claims, allege  
 3 that due to official action, a specific case “cannot now be tried (or tried with all material  
 4 evidence), no matter what official action may be in the future.” Id. at 413-14. These cases look  
 5 “backward to a time when specific litigation ended poorly, or could not have commenced, or  
 6 could have produced a remedy subsequently unobtainable.” Id. at 414.

7 To establish an access to the court violation, a prisoner must identify an actual  
 8 injury. Lewis, 518 U.S. at 349-351; Nev. Dep’t of Corrs. v. Greene, 648 F.3d 1014, 1018 (9th  
 9 Cir. 2011); Urmanceev v. Anglea, No.:1:19-cv-00791-DAD-JLT (PC), 2020 WL 1904818, at \*2  
 10 (E.D. Cal. Apr. 17, 2020). An actual injury is “actual prejudice with respect to contemplated or  
 11 existing litigation, such as the inability to meet a filing deadline or to present a claim.” Lewis,  
 12 518 U.S. at 349; Urmanceev, 2019 WL 1904818, at \*2. An actual injury is a jurisdictional  
 13 requirement and may not be waived. See Lewis, 518 U.S. at 348-52; Urmanceev, 2019 WL  
 14 1904818, at \*2. And in the backward-looking context more specifically, a plaintiff must identify:  
 15 (1) loss of a “nonfrivolous,” “arguable” underlying claim; (2) the official acts that frustrated the  
 16 litigation of the underlying claim; and (3) a remedy that “may be awarded as recompense but [is]  
 17 not otherwise available in some suit that may yet be brought.” Harbury, 536 U.S. at 414-18;  
 18 Urmanceev, 2019 WL 1904818, at \*2; Kabede v. Brown, No. 2:16-cv-1765 DB (P), 2017 WL  
 19 714300, at \*6 (E.D. Cal. Feb. 22, 2017).

20 Plaintiff has failed to allege an actual injury. Additionally, Plaintiff alleges that on  
 21 April 19, 2021, he had two claims that still had not been filed. See ECF No. 1, pg. 3. Plaintiff  
 22 had two claims (excluding the present case) that were filed on April 26 and 28, 2021, (Driver v.  
 23 CHCF, et al., 21-CV-0744-JAM-KJN; and Driver v. Approved Computer Tablet Program, et al.,  
 24 21-CV-0761-KJM-DB). Further, a claim was filed on June 28, 2021 (Driver v. McClough, 21-  
 25 CV-1142-JAM-JDP). Thus, Plaintiff may not have an actual injury for his access to courts claim.  
 26 Regardless, Plaintiff will be given an opportunity to amend his complaint.

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### III. CONCLUSION

Because it is possible that the deficiencies identified in this order may be cured by amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an amended complaint supersedes the prior complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to amend, all claims alleged in the prior complaint which are not alleged in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be complete in itself without reference to any prior pleading. See id.

If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is involved, and must set forth some affirmative link or connection between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

Finally, Plaintiff is warned that failure to file an amended complaint within the time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b). See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's complaint is dismissed with leave to amend and
2. Plaintiff shall file a first amended complaint within 30 days of the date of service of this order.

Dated: January 20, 2022



DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE